

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

HARRY G. SCHORTMANN, JR., PRO SE  
JACQUELINE SCHORTMANN, PRO SE

Plaintiffs

Civil No. 04-11011-MLW

v.

INTERNAL REVENUE SERVICE OF  
THE UNITED STATES GOVERNMENT

Defendant

RESPONSE TO DEFENSES OF THE UNITED STATES

FIRST DEFENSE

*The taxpayers have failed to satisfy the jurisdictional requirements of 26 U.S.C. § 7433 with respect to their claim for damages.*

RESPONSE: Irrelevant. The complaint is not concerning *Civil damages for certain unauthorized collection actions.*

SECOND DEFENSE

*The taxpayers have failed to establish a waiver of the United States' sovereign immunity.*

RESPONSE: The Internal Revenue Service has established that the United States District Court is a proper venue for a tax payer to seek relief.

*If you and the IRS still disagree after the appeals conference, you can take your case to . . . the United States District Court.*

IRS Publication 556 November 2000, page 8.

### THIRD DEFENSE

*The taxpayers have failed to satisfy the jurisdictional requirements of 26 U.S.C. § 7422.*

RESPONSE: The assertion is false. The Plaintiffs have exhausted the appeal process including seeking the intervention of Internal Revenue Service Commissioner, Mr. Charles O. Rossetti.

### FOURTH DEFENSE

*The taxpayers have failed to establish an exception to the Anti-Injunction Act in the matter.*

RESPONSE: The Anti-Induction Act is irrelevant to this matter.

### FIFTH DEFENSE

*The taxpayers have failed to establish entitlement to attorneys' fees.*

RESPONSE: Irrelevant to whether this matter should proceed to trial.

### SIXTH DEFENSE

*The United States denies the allegations contained in paragraph 2 of the complaint and asserts that the United States is the proper party defendant in this matter, not the Internal Revenue Service.*

RESPONSE: The assertion is denied.

*The United States denies . . . pursuant to 26 U. S. C. § 1346(a)(2) . . .*

RESPONSE: 26 U. S. C. § 1346 has been repealed.

*The United States admits . . . The United States denies the remaining allegations contained in paragraph 4 of the complaint.*

RESPONSE: The allegations in paragraph 4 of the complaint are a matter of fact for a jury to decide.

If it be allowed that all the defenses of the United States are valid, the complaint still ought to be allowed to proceed to trial. None of the defenses address the basis of the complaint that the Internal Revenue Service reneged on its agreement.

The defenses of the Defendant thwart rather than promote justice.

Madison wrote in *The Federalist No. 51*,

*Justice is the end of government.*

To prevent this complaint to proceed would be an act contrary to the purpose of the founding of the United States.

WHEREFORE, the Plaintiffs respectfully request that this court deny the Defendant's request that the Plaintiff's action be dismissed.

Respectfully submitted,

*Harry G. Schortmann, Jr.*

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*Jacqueline Schortmann*

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A copy of this document was mailed on September 20, 2004 to:

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